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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

JOSE BAUTA,	:	14-CV-3725 (RER)
	:	
Plaintiff,	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	
GREYHOUND LINES INC., SABRINA	:	Friday, June 1, 2018
ANDERSON, AKOS GUBICA, KAROLY	:	9:30 a.m.
GUBICA, AND CAV ENTERPRISE	:	
LLC,	:	
	:	
Defendant.	:	

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TRANSCRIPT OF CIVIL CAUSE FOR TRIAL
BEFORE THE HONORABLE RAMON E. REYES
UNITED STATES MAGISTRATE JUDGE

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1 (In open court at 9:30 a.m. awaiting verdict of the
2 jury.)

3 (In open court at 10:54 a.m.; Court Exhibit 41 so
4 marked.)

5 THE COURT: Good morning. We've received another
6 note from the jury. It's been marked as Court Exhibit 41.
7 Today's date, 10:45 a.m.: Judge Reyes, the jurors would like
8 to request bulletin from September 2004 and the G-40 rule
9 from the rule book and the 5.8 rule. Can you please send
10 exhibits to jury room?

11 What we have done is taken the original marked
12 exhibits, Defendants' Exhibit 167, 167A, and Plaintiff's
13 116-0001, pulled them, and have indicated with red post-its,
14 one that says G-40 that's in Defendants' Exhibit 167A,
15 corresponding to the page where G-40 appears. It's the whole
16 rule book, just directing them where the rule they requested.
17 Similarly, for Defendants' 167, which is the subsequent rule
18 book, we have a red post-it with 5-8, where that rule is. And
19 the bulletin is just a single page.

20 So, we'll send these back. You can take a look at
21 them.

22 MR. BARMEN: Thank you, your Honor.

23 MR. MCELISH: Interestingly, I guess -- well,
24 first, for the record, these rule books are also Plaintiff's 1
25 and 2 in evidence, I think.

1 But besides that, 5-8 goes on to the next page, so
2 maybe the next page ought to be marked because it's a
3 continuation over.

4 Here you go, Brad.

5 And there's actually a portion of the rule that's
6 highlighted that's not 5-8. I don't know if that matters or
7 not, but maybe we can get a clean copy that doesn't...

8 THE COURT: Would you go get Plaintiff's 1 and 2?

9 We notice there's highlighting throughout both of
10 those exhibits.

11 MR. MCELISH: I think Plaintiff's 1 doesn't have
12 the highlighting and Plaintiff's 2 doesn't have the
13 highlighting.

14 MR. BARMEN: 5-8 is down there.

15 MR. MCELISH: And it goes over to the next page.

16 MR. BARMEN: Yes.

17 I agree with Mr. McElfish, your Honor, because of
18 the highlighting on different rules, that maybe we should send
19 back the Plaintiff's version.

20 THE COURT: If it's not highlighted.

21 MR. MCELISH: I don't think it is.

22 MR. BARMEN: I don't think it is.

23 MR. MCELISH: These things all seem sort of
24 perfunctory, but it can matter, I guess. Everything matters.

25 MR. BARMEN: What does "perfunctory" mean?

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1 MR. MSELFISH: I don't know, just meaningless.
2 Don't challenge. Don't challenge because I probably misused
3 it.

4 It may mean something, so we'll fix it.

5 MR. BARMEN: I agree with Mr. McElfish that we
6 should send back a copy that doesn't have highlights.

7 MR. MSELFISH: And you agree we should mark the
8 second page too?

9 MR. BARMEN: I also agree with that, yes, assuming
10 the way that you have it is not on one page.

11 MR. MSELFISH: I think I have it the same way that
12 you have it.

13 MR. BARMEN: It only took 35 days, but we agree on
14 something.

15 MR. MANNION: It's taken a lot longer than that.

16 THE COURT: Almost four years?

17 MR. BARMEN: I haven't been involved in this one
18 that long, your Honor.

19 THE COURT: That's right, it was Mr. Moroknek at
20 first.

21 (Pause in proceedings.)

22 THE COURT: Plaintiff's 1 and 2 do not have
23 highlighting, so we will send those back instead. Plaintiff's
24 1, I don't know if we don't have a complete copy.

25 Can you do me a favor and pull up the docket sheet

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1 and see if Plaintiff's 1 has been uploaded with all the pages?

2 THE LAW CLERK: Yes.

3 MR. MCELISH: I can e-mail the electronic version
4 that was in the exhibit books.

5 THE LAW CLERK: Give me one second.

6 (Pause in proceedings.)

7 THE COURT: So, we have G-40, Plaintiff's 1,
8 Plaintiff's 2, we've got the things, and then Plaintiff's 116.
9 Okay. There we go.

10 Why don't you give this to the marshal and he can
11 give it to the jurors?

12 THE LAW CLERK: Okay.

13 (Court in recess at 11:07 a.m. awaiting verdict of
14 the jury.)

15 (In open court at 12:20 p.m.; Court Exhibit 42 so
16 marked.)

17 THE COURT: As you can see, we've received another
18 note. It's been marked Court Exhibit 42. Today's date,
19 12:10 p.m.: Judge Reyes, the jury has reached a verdict.

20 Signed by the foreperson, Liana Morales.

21 We'll have the jury come in, we will receive their
22 verdict, we will thank them and ask them to retire to the jury
23 room. It's my practice to personally thank the jury myself in
24 the jury room. And if the attorneys want to speak with the
25 jury, I ask the jurors if that's okay with them; and, if they

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1 have no problem, the attorneys can speak with them.

2 My preference is that you go in together rather than
3 separately. It's a pretty big room, but I don't think it can
4 accommodate everyone. So, if representatives would go in,
5 that would be great, if you want to do that.

6 MR. BARMEN: Yes, your Honor.

7 MR. MCELFISH: Yes.

8 THE COURT: Okay.

9 Miriam, let's get the jury, please.

10 (Jury enters.)

11 THE COURT: You may be seated.

12 Ladies and gentlemen, we've received your note and
13 we understand that you've reached a verdict.

14 Is that correct?

15 THE FOREPERSON: Yes.

16 THE COURT: Ms. Morales, can you tell us the jury's
17 answer to special verdict form question 1.a, punitive damages
18 for Greyhound's conduct?

19 THE FOREPERSON: Yes. 1,536,625.

20 THE COURT: 1,536,000?

21 THE FOREPERSON: 625.

22 THE COURT: 625.

23 And can you tell me the answer for question 1.b,
24 punitive damages for Sabrina Anderson's conduct?

25 THE FOREPERSON: 1,698,375.

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1 THE COURT: And the total?

2 THE FOREPERSON: 3,235,000.

3 MR. MCELISH: Again, I'm sorry?

4 THE COURT: 3,235,000.

5 Ms. Morales, is this your verdict?

6 THE FOREPERSON: Yes.

7 THE COURT: Juror No. 2, is this your verdict?

8 JUROR NO. 2: Yes.

9 THE COURT: Juror No. 3, is this your verdict?

10 JUROR NO. 3: Yes.

11 THE COURT: Juror No. 4, is this your verdict?

12 JUROR NO. 4: Yes.

13 THE COURT: Juror No. 5, is this your verdict?

14 JUROR NO. 5: Yes.

15 THE COURT: Juror No. 6, is this your verdict?

16 JUROR NO. 6: Yes.

17 THE COURT: Juror No. 7, is this your verdict?

18 JUROR NO. 7: Yes.

19 THE COURT: Juror No. 8, is this your verdict?

20 JUROR NO. 8: Yes.

21 THE COURT: Juror No. 9, is this your verdict?

22 JUROR NO. 9: Yes.

23 THE COURT: Juror No. 12, is this your verdict?

24 JUROR NO. 12: Yes.

25 THE COURT: Just for the record, we lost Jurors 10

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1 and 11.

2 If you can give the marshal the signed verdict form
3 and the jury instructions, that's great.

4 Ladies and gentlemen, I'll ask you to retire to the
5 jury room. I'll come talk to you in a minute and thank you
6 personally for your service and about some other things.
7 Thank you.

8 (Jury exits.)

9 THE COURT: Give me a few minutes.

10 (Recess taken.)

11 THE COURT: Go ahead, Mr. Shaub.

12 MR. SHAUB: I'd like to again address the issue of
13 the scheduling of the entry of judgment in this case.

14 I just was reviewing the transcript yesterday, and
15 it seemed like we were going to be entering judgment before
16 the collateral source hearing. We just don't really think
17 that's practical or proper under New York law. We think it
18 would be more efficient to have a global resolution of all the
19 issues before we had an entry of judgment in this case.

20 I would just cite the Court to a case from the
21 Southern District, *Okrayaents v. MTA*, 555 F. Supp. 2d 420, and
22 the PIN site is 453. And in that case, I think it was Judge
23 McMahon said that the collateral source hearing has to be held
24 before the entry of judgment.

25 So, to the extent the Court is disinclined to do

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1 that, we'd just like the record to clearly reflect that the
2 Defendants are requesting a collateral source hearing before
3 the entry of judgment.

4 THE COURT: Okay. I'll take it under advisement,
5 I'll take a look at that case.

6 MR. MCELFISH: What was the name of the case?

7 MR. SHAUB: I'll write it down for you.

8 THE COURT: Let us assume that for whatever reason
9 we have to have a new trial on compensatory damages. Does
10 that have an effect on the punitive damages?

11 Because part of the punitive damages calculation
12 or --

13 MR. MCELFISH: The ratio.

14 THE COURT: Well, it's not the ratio, but part of
15 the standard that the jury has to look at, one of the elements
16 is the nature and extent of harm to the plaintiff that the
17 defendant caused or intended to cause.

18 So, certainly evidence about injuries and all of
19 that would have to be part of any jury's determination on
20 punitive damages. And this jury had the benefit of hearing
21 that in the compensatory damage phase. But if we throw out
22 the compensatory damage verdict and have to have a new trial
23 on that, that jury may find something completely different;
24 they may find harm to his back was \$6 million.

25 So, aren't they both together? So, you get a new

1 trial on one, you get it on the other?

2 Certainly, with a new trial on compensatory, you
3 have to have new trial on punitives as well with a whole new
4 jury. And if the compensatory stays but you get a new trial
5 on punitives, you'd have to have the compensatory over again
6 because that jury has to hear the harm and there has to bear
7 some relationship, right?

8 MR. MCELISH: I think they have to be together and
9 I'm okay with that.

10 THE COURT: So, if we get a new trial, we're going
11 to have to do all of this over again.

12 MR. MCELISH: Unless, you know, additur or
13 something is granted, but, yes, sounds like it.

14 Let me think about that because my initial reaction
15 is I agree with you, but I want to think about that a little
16 bit.

17 MR. SHAUB: Your Honor, the defense would like some
18 time to mull that over as well.

19 THE COURT: Address that in your motions for a new
20 trial. Address that issue. I'm interested in what your
21 thoughts are on it.

22 And I understand from what you've told me previously
23 that I will get cross-motions for a new trial.

24 MR. BARMEN: Not from me. That will come from him,
25 not from me. I'm going home.

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1 THE COURT: If my math is right, the total verdict
2 was \$3,888,152.47.

3 MR. MCELISH: One more time, please.

4 THE COURT: \$3,888,152.47, which I think is almost
5 right in the middle of where we were when we were discussing
6 settlement the first time around.

7 MR. MCELISH: It is.

8 THE COURT: All right. Let me take a look at this
9 case. You'll know shortly what the schedule is going to be.

10 MR. MCELISH: The case only bears on the schedule
11 that you're looking at?

12 THE COURT: The case only bears on the schedule
13 whether I have to or should wait for the collateral source
14 hearing before entering judgment. Entry of judgment would
15 trigger the date for filing of motions for a new trial.

16 MR. MCELISH: Frankly, I mean, if we need a
17 collateral source hearing, we'll have one, but we should be
18 able to agree to some of this. If the payments were made -- I
19 mean, we'll have to talk about that, but if the payments were
20 made, what -- or at least narrow the scope of the hearing. It
21 shouldn't be -- they're made, they're made. I said that at
22 sidebar many times; if they were made, they were made.

23 THE COURT: Again, it's the issue of if they were
24 made, they were made. And if the maker is asserting a lien,
25 we'd have to know that. And that should be information you

1 get in your subpoenas.

2 MR. MCELISH: Right.

3 MR. SHAUB: Your Honor, I kind of understood the
4 concern yesterday was that you didn't want the motion schedule
5 to drag out forever and that's one of the reasons you wanted
6 to enter judgment soon.

7 THE COURT: My thought was two things: I don't want
8 the motion schedule to drag out forever, number one; and,
9 number two, I don't think we have to wait for the motions to
10 be briefed before we have a collateral source hearing.

11 We can do it on a much more expedited basis where we
12 enter judgment, have a collateral source hearing as the
13 motions are being briefed, and then, if we need to change the
14 judgment, we enter an amended judgment at the end of the day.

15 MR. SHAUB: What if we set a briefing schedule
16 before entry of judgment 45 days for the opening briefs, 30
17 days for responses, and then hold the collateral source
18 hearing sometime in between those, so 60 days.

19 So, we would have the briefing going simultaneously
20 with the collateral source hearing, and that seems like that
21 would address the Court's concern about the timing of
22 everything and keeping this case moving.

23 THE COURT: I'll take a look at the case and see how
24 it impacts my decision, and you'll see based on the schedule
25 that I put up within the next week or so.

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1 MR. SHAUB: So, we should not anticipate seeing a
2 judgment entered within the next week?

3 THE COURT: Not within the next week.
4 And you should start on your motions.

5 MR. SHAUB: Understood.

6 MR. MCELISH: Let's assume the case doesn't change
7 your mind. What are you thinking in terms of entering
8 judgment, so we can know sort of when it's coming?

9 Motions are started already, of course, just trying
10 to see what you think.

11 THE COURT: Week after next, judgment would be
12 entered sometime that week.

13 I would like a proposed judgment from each side
14 submitted by the end of next week. You have a compensatory
15 damage verdict against both defendants. Are they jointly and
16 severally liable or no?

17 MR. BARMEN: I believe joint and several would
18 apply. You're speaking specifically about the compensatory --

19 THE COURT: I want to do one judgment that
20 encompasses both compensatory and punitive damages.

21 So, judgment against Sabrina Anderson and Greyhound
22 jointly and severally for whatever the compensatory damage
23 verdict was. And you need to do the math. I did the
24 magistrate, I checked it twice, but you need to make sure I'm
25 right. My number for compensatory is \$653,152.47. But you'll

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1 correct my math if I'm wrong.

2 You see, the jury in Pennsylvania on which the
3 collateral estoppel ruling was predicated found Anderson
4 55 percent and Greyhound 45 percent. So, does not that apply
5 to this case for compensatory?

6 And then we have our separate punitive damages that
7 the jury allocated here. And I did the math: Anderson under
8 55 percent of the compensatory damages would be liable for
9 \$359,233.86; Greyhound, 45 percent would be \$293,918.61.

10 But as Anderson's employer, aren't they responsible
11 for Anderson's portion as well?

12 So, how would you put that in the judgment?

13 MR. MCELISH: In California, there's a case called
14 *Diaz* that says that they merge. I have to check New York law
15 and see if there's a similar case. Usually they merge -- I'll
16 check.

17 MR. BARMEN: I don't think there's an issue with the
18 compensatory, your Honor.

19 THE COURT: I know Greyhound is going to pay it --

20 MR. BARMEN: Yes.

21 THE COURT: -- but you're going to technically have
22 a judgment on the books that's going to go against
23 Ms. Anderson, it's going to show up on her credit report. We
24 want it to be the right amount that she's legally responsible
25 for.

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1 So, you need to look at all this and do a proposed
2 judgment. If you can agree to it, fine. If not, submit your
3 own by the end of next week.

4 I am not going to put it down or file it until I
5 look at this case and decide whether I want to cut you some
6 slack, all right?

7 MR. MCELISH: Anticipate a Rule 54 motion too. I
8 think it's 54, a prevailing party cost motion, tax cost.

9 THE COURT: If you do, you've got deposition
10 transcripts and the trial transcripts. I need to see bills
11 for those.

12 MR. MCELISH: Sure.

13 THE COURT: That it was Mr. Bauta who paid for them
14 through your firm, not plaintiffs in those other cases. If
15 these are merely copies of something that you got somewhere
16 else, that's not a proper taxable loss.

17 MR. MCELISH: I'll submit only what I paid.

18 That's going to be filed, I guess, concurrent with
19 motions for new trial and additur, I suppose.

20 THE COURT: I think we have a local rule on that,
21 the timing for that, if I'm not mistaken.

22 MR. MCELISH: Okay. I'll check. I think it's Rule
23 54.

24 THE COURT: Anything else?

25 MR. MANNION: Thank you, Judge.

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1 THE COURT: Thank you, gentlemen and ladies.

2
3 (Matter concluded.)

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8 E X H I B I T S

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11 Court Exhibit 42 Page 4343

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13 * * * * *

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